

ELDER LAW *Update*

NEWS AND IMPORTANT INFORMATION FOR SENIORS AND THEIR FAMILIES



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NEW WAVE OF LAWSUITS MAY FORCE CHILDREN TO PAY FOR ELDERLY PARENTS' NURSING COSTS



Many of our clients and readers are caregivers of elderly parents; they have chosen to take responsibility for their parents—whether it be physical responsibility, financial, or other. But what if instead of making that choice, you had

responsibility for your aging parents thrust upon you? This is exactly what happened in the case of *Health Care & Retirement Corporation of America v. Pittas*, recently brought before the Pennsylvania appeals court.

This particular case states that “On or about September 24, 2007, after completing rehabilitation for injuries sustained in a car accident, Appellant’s [John Pitta’s] mother was transferred to an HCR facility for skilled nursing care and treatment. Appellant’s mother resided in the facility and was treated by HCR until March of 2008. In March of 2008 Appellant’s mother withdrew from the HCR facility and relocated to Greece.”

Following Pittas’ mother’s relocation, a large portion of her bill at the nursing home went unpaid. Mr. Pittas’ mother applied to Medicaid to cover her care, but while that application was still pending, the nursing home sought to hold Mr. Pittas responsible for the debt under the state’s filial responsibility law. Although the case went to an arbitration panel which initially ruled in favor of Mr. Pittas, eventually the Pennsylvania trial court ruled in favor of the nursing home, holding Pittas responsible for nearly \$93,000 of his mother’s nursing expenses.

So far this has only happened in one state, but there are many other states which still have filial responsibility laws on the books. These laws have rarely been enforced thus far, but this ruling by the Pennsylvania Supreme Court does not bode well for children of aging parents throughout the U.S., many of whom are finding themselves caught between caring for elderly parents and for grown children who have not yet left the nest.

Perhaps one of the most disturbing things about this case is that the nursing home was given so much leeway. The Pennsylvania Supreme Court found that “Nothing in [Pennsylvania Law] requires a movant or a court to consider other sources of income [for the elderly parent] or to stay its determination pending the resolution of a claim for medical assistance.” Furthermore, the court also stated that it was the nursing home’s right to choose which family members to pursue for the money owed.

This would seem to condone (if not encourage) a litigious mind-set among nursing homes; and if you are one of many siblings with an elderly parent you could find yourself involved in a lawsuit merely because you live the closest, are the wealthiest, or called mom more often than your brothers or sisters.

The best way to guard against yourself or your family becoming embroiled in a similar lawsuit is to ensure that you (or your elderly parents) have a plan in place to pay for long-term care. Talk to your parents about what plans (if any) they have to pay for their future long-term care needs, and contact our office to explore your options.

THE HIGH EMOTIONAL—AND FINANCIAL— COST OF ALZHEIMER'S DISEASE



Alzheimer’s is a disease that affects everybody it touches—husbands, wives, children and grandchildren—they all bear witness to their loved one’s slow demise.

Sadly, emotional stress is not the only stress that accompanies Alzheimer’s disease; those loved ones serving as caretakers may carry a huge amount of financial stress as well. The cost of caring for an Alzheimer’s patient can run anywhere from \$64 a day to \$77,380 a year, and because Alzheimer’s disease can be such a long-lasting disease (a person can suffer from Alzheimer’s for up to 20 years) the costs of care can end up being astronomical. It’s obvious that people can’t do it alone.

Long-term care insurance can be very helpful in paying for the costs of care necessary for a loved one suffering from Alzheimer’s... if your loved one has thought ahead and purchased the policy before they or their spouse began suffering from symptoms of Alzheimer’s. Some people may not have thought ahead and hope that government programs will be able to help with the high cost of care. Medicaid (or MediCal in California) can be helpful—although Medicare doesn’t cover the cost of long-term care—but only if you fall in the right category and know how to navigate the complex Medicaid system.

Unfortunately, learning how to navigate the system is not something you can do in an hour or two. Because each individual experience with Medicaid will depend on a number of unique factors we can’t give you an easy set of instructions to follow. The best advice we can give is to say that right now, the best way to navigate the Medicaid/Medi-Cal system is to find someone who knows the system to assist you. As an elder law firm we help clients with these issues on a regular basis. If you want to ensure that you and your loved ones will be cared for no matter what the future may bring, please contact our office for help.

SPOUSAL REFUSAL: THE PAINFUL (BUT SOMETIMES NECESSARY) DECISION



Couples who are still married, even into their 70s or 80s are the lucky ones. They’ve made it through the hard times, the ups and downs of life, and still have their companion at their side. But even the most devoted of spouses is sometimes finds it necessary to exercise “Spousal Refusal” to pay the long-term care bills of their spouse when he or she has lost the ability to perform the activities of daily living.

Spousal Refusal refers to one spouse’s official and legal refusal to pay for long-term care expenses of the other spouse. In general, married couples have a legal obligation to pay for the healthcare costs incurred by either spouse if they are admitted into a nursing home. However, if your spouse has been admitted to a nursing home, and you have limited resources, you may fill out a form with Medicaid stating that you refuse to pay for your spouse’s care. This may sound cruel or selfish, but exercising Spousal Refusal can sometimes be the only way to save the healthy spouse’s small nest egg for his or her own needs in later years.

Spousal Refusal is not about turning away from a spouse in their time of need; in fact, many of the elderly individuals who exercise this option do so only after a long and painful decision-making

process, and they do it not out of selfishness but out of necessity. Patients who need more than the first 100 days of nursing or rehab care covered by Medicaid can find themselves facing costs in excess of \$100,000 per year. It is not uncommon for a couple to lose their house and all of their savings because of one extended stay in a nursing home.

It is good to know that couples who forgo Spousal Refusal and choose to pay for a spouse’s long-term care costs after all won’t be left completely out in the cold. Anti-spousal impoverishment laws were enacted on the federal level in the late 1980s. In 2012, the health care system is permitted to retain up to \$113,640 in assets while his or her sick or recovering spouse is covered under Medicaid. Unfortunately, in this day and age, \$113,640 doesn’t go a long way, especially if the healthy spouse lives for another decade or so.

The decision to exercise Spousal Refusal is not an easy decision to make. Married couples must weigh the costs and benefits—not only financial costs and benefits, but emotional and ethical as well. The decision-making process can be emotional and overwhelming, and no couple should have to go through it alone. Contact our office if this is something you or your family is facing, we can help.



Apple Law Firm PLLC

Jacksonville Office

3733 University Blvd. West | Suite 212B | Jacksonville, FL 32217
Tel: (904) 685-1200 | Fax: (904) 875-4081

Jacksonville Beach Office

324 6th Ave North | Jacksonville Beach, FL 32250
Tel: (904) 425-1910 | Fax: (904) 875-4081

www.jacksonvillelawyer.pro